



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

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MARY F. MCTIGUE  
DIRECTOR

June 18, 1991  
AO-91-12

Daniel Winslow, Esq.  
Sherin and Lodgen  
100 Summer Street  
Boston, MA 02110

Re: Republican Redistricting Task Force

Dear Mr. Winslow:

This letter is in response to your April 25, 1991, letter requesting clarification of Advisory Opinion AO-89-27 or a further advisory opinion regarding the application of M.G.L. c.55, s.8 to the Republican Redistricting Task Force (hereinafter "Task Force")

Advisory Opinion AO-89-27 was issued on December 7, 1989, in response to your October 10, 1989, letter requesting this Office's opinion. At that time you had recently created an organization tentatively called the "Republican Redistricting Task Force." The description of your organization and its purposes were set forth in the Office's 1989 opinion which is attached hereto as Appendix A. In that opinion the Office concluded in Part 3 that M.G.L. c.55, s.8 prohibited contributions to the Task Force as contributions aiding or promoting or antagonizing the interests of a political party. Since AO-89-27 was issued, you have formed the Task Force. You are writing again because there are additional facts which have arisen which you believe may affect this Office's earlier opinion. Alternatively, you ask this Office to reconsider its opinion in light of concerns which are raised in your letter.

This Office gave a number of individuals an opportunity to comment on your request. Of the three political parties who were notified of the request on May 7, 1991, two of the three parties submitted comments either in writing or orally.

I. Additional Factual Circumstances

The additional factual circumstances brought to the Office's attention are set forth in full in Appendix B. These

circumstances fall into three categories. First, you state that only 2 members of the 15-member Task Force represent the Republican Party in its official capacity. Next, you note that computer services and possibly other services will be made available to non-Republican groups representing the interests of various minority communities, to assist these groups in analyzing redistricting plans and preparing alternative plans for consideration by the Legislature or the Federal Courts. You also comment that the Task Force has publicly stated its intention to enforce compliance with the federal Voting Rights Act of 1965. Finally, you state that the Task Force's "express purpose" is to insure compliance with state and federal requirements in all state and federal redistricting plans and that such activities are in the public interest rather than for "any benefit to the Republican Party exclusively."

M.G.L. c.55, s.8 provides, in pertinent part:

No corporation carrying on [certain listed businesses] . . . , no business corporation incorporated under the laws of or doing business in the commonwealth and no officer or agent acting in behalf of any corporation mentioned in this section, shall directly or indirectly give, pay, expend or contribute, or promise to give, pay, expend or contribute, any money or other valuable thing for the purpose of aiding, promoting or preventing the nomination or election of any person to public office, or aiding or promoting or antagonizing the interest of any political party.

In A0-89-27, this Office concluded that corporate contributions to the Task Force would be prohibited by section 8 because of "the sponsorship of Republican legislators and leaders." While this Office appreciates the fact that the Task Force's goals and purposes may, in certain aspects and at certain times, coincide with the goals and purposes of other non-Republican groups or the general public interest, it is the opinion of this Office that the fundamental purpose of the Task Force is to aid and/or promote the interests of the Republican Party relative to Massachusetts' state and congressional redistricting.

The above conclusion is based upon a number of factors. First, although the Republican Party, in its official capacity, may only be represented by two members of the 15 member Task Force, all members of the Task Force are also members of the Republican Party. According to the membership list which you forwarded to me, the Task Force's members include, among others: Governor William F. Weld, Lieutenant Governor Paul Cellucci, Senate Republican Leader David H. Locke, House Republican Leader Peter Forman and Republican National Committeeman Ronald Kaufman. Even if these members do not "formally" represent the Massachusetts Republican State Committee and possess "diverse interests", it would be difficult to conclude that they do not have the interests of the Republican Party at heart.

Next, I note that the very name "Republican Redistricting Task Force" strongly suggests that the Task Force's interests and purpose must be consistent with those of the Republican Party. Indeed, M.G.L. c.56, s.40 prohibits any organization other than a duly elected political committee from using the name of a political party in its organization's name without the written consent of that political party's state committee, a consent which you have informed me the Task Force has received in compliance with section 40 and the Republican State Committee's by-laws. The very name of the Task Force is apt to attract certain persons and certain funds that would not be drawn to either a Democratic Redistricting Task Force or a Tri-partisan Redistricting Task Force. Political parties do not treat the use of their name lightly. In fact, this Office recently informed a non-elected multi-candidate committee that it would have to change its name as a result of the Secretary of State's recent certification of the Independent Voters Party.

It is conceivable, and you so state, that the Task Force plans to share information and services with non-Republican groups. The groups listed represent different minority interests and one group referenced is the Latino Democratic Committee of Massachusetts. The fact that the Task Force intends to share some of its services and resources with only certain groups to assist those groups in developing responses to an initial redistricting proposal by what you refer to as the "Democratically-controlled Legislature" heightens rather than lessens the partisan nature of the Task Force's undertaking as suggested by its name.

Finally, a review of the Task Force's purpose, as articulated in a March 4, 1991, memorandum forwarded by you to this Office, dispels any doubt regarding its purpose. Section 3 states, in full:

The purpose of the RRTF is to permit coordination within the Republican leadership on the issues of legislative and congressional redistricting. The Organization's activities will include monitoring legislative activities relating to redistricting, preparing and implementing a Republican redistricting alternative, and preparing for litigation necessary to insure compliance with state and federal requirements in all legislative and congressional redistricting plans. (emphasis supplied)

Although an express purpose of the Task Force includes insuring compliance with state and federal requirements, insuring such compliance is not its sole purpose. In fact, insuring compliance is noted as the last "activity" after "preparing and implementing a Republican redistricting alternative." The only "purpose" as stated is "coordination within the Republican leadership on the issues of legislative and congressional redistricting."

For all the above reasons, it is the opinion of this Office that the additional facts presented would not alter its previous conclusion that the activities of the Task Force are being undertaken, in the language of section 8, "for the purpose of . . . aiding or promoting . . . the interests of" the Republican Party.

## II. Constitutional Issues

In the event that the additional factual circumstances which you present do not alter this Office's opinion, you ask that the Office reconsider its opinion on First Amendment constitutional grounds. For the reasons set forth below, it is the opinion of the Office that constitutional considerations and analysis support rather than undercut AO-89-27.

Initially, I note that this Office has addressed the issue of corporate contributions to special legal funds related to party activities on more than one occasion. In AO-84-11, the Office concluded that M.G.L. c.55, s.8 prohibited corporate contribution to a legal fund under consideration by the Democratic State Committee designed to defend litigation with respect to candidate access to the primary ballot. Neither that opinion nor AO-89-27, however, addressed the constitutional underpinning of the statute.

You have suggested that M.G.L. c.55, s.8 affects certain rights of free speech by prohibiting corporations from making contributions to candidates and political parties. Assuming that the First Amendment is implicated by campaign finances prohibiting corporate contributions under these circumstances, it could be constitutionally justified only by the government's compelling interest to avoid corruption or the appearance of corruption. See FEC v. National Conservative Political Action Comm. 470 US 480, 496-497 (1985) and Weld for Governor v. Director of the Office of Campaign and Political Finance, 407 Mass. 761,770, 556 N.E.2d 21,26 (1990).

However, the U.S. Supreme Court has recognized just such a compelling governmental interest in "the restriction of the influence of political war chests funneled through the corporate form." See Austin v. Michigan Chamber of Commerce, 110 S.Ct. 1391,1397 (1990) and cases cited therein. In Austin, the Supreme Court upheld a Michigan statute which prohibited corporate contributions except through a separately segregated fund. In commenting on the Michigan statute the Court noted:

[T]he corrosive and distorting effects of immense aggregations of wealth that are accumulated with the help of the corporate form and that have little or no correlation to the public's support for the corporation's political ideas (citation omitted). The Act does not attempt "to equalize the relative influence of speakers on elections," (citation omitted); rather, it ensures that

expenditures reflect actual public support for the political ideas espoused by corporations. Austin, supra at 1397-1398.

While section 8 of chapter 55 is very different in its structure from the Michigan statute, it is the long held view of this Office that its purpose is to prevent corruption or its appearance through the regulation of corporate participation in the political arena. Section 8 is also narrowly tailored to achieve this purpose. It does not apply to non-profit corporations but only to business or for-profit corporations. Further, although section 8 does not provide for separately segregated funds as the Michigan and federal statute do, nothing in section 8 or chapter 55 prohibit officers, directors and employees of corporations from giving directly to the Task Force or from forming a multi-candidate committee or so-called PAC to raise monies from their fellow employees, business associates or shareholders. See Op. Atty. Gen., November 6, 1980. Therefore, section 8 "ensures that expenditures reflect actual public support for the political ideas espoused by corporations."

You have also argued that the Office's conclusion herein may implicate certain First Amendment associational rights of political parties. If such rights are so implicated, however, it is the opinion of this Office that it would be justified by the compelling state interest noted above. Additionally, both the Supreme Court and Massachusetts' Supreme Judicial Court have recognized that:

States may enact laws to "prevent the disruption of the political parties from without" but not laws "to prevent the parties from taking internal steps affecting their own process for the selection of candidates". Weld, supra at 770 quoting Tashjian v. Republican Party of Conn., 479 US 208, 224 (1986).

To the extent section 8 as herein applied regulates political parties, it is the opinion of this Office that it is not, in any way, regulating the internal self government of political parties. Rather, it is prohibiting the potential, systematic corruption of the political process by prohibiting corporations from pouring vast sums of money into the redistricting process.

While you have also suggested that the activities of the Task Force will be in the public interest assuming its activities are limited to analyzing redistricting plans and preparing constitutionally acceptable alternatives, the Office cannot agree. While any redistricting plan must, as you say, be legal or illegal, plans can still be partisan. "The reality is that districting inevitably has and is intended to have substantial political consequences." Davis v. Bandemer, 478 US 109, 129 (1986). Indeed, in Davis, the plurality opinion noted that many of the holdings in various redistricting cases:

Daniel Winslow, Esq.  
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[R]est on a conviction that the mere fact that a particular apportionment scheme makes it more difficult for a particular group in a particular district to elect the representatives of its choice does not render that scheme constitutionally infirm. Davis, supra at 131.

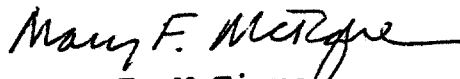
From the above discussion as well as the Supreme Court's discussion in Davis, supra at 128-133 (See also Gaffney v. Cummings, 412 US 735, 749-754), it is clear that redistricting plans may within certain limits favor one group or party over another, and still meet constitutional requirements. Therefore, even though any redistricting plan that the Task Force may offer to the Federal Courts must meet constitutional standards, it may also be designed to help the Republican Party. Indeed, given the described purpose of the Task Force, one would have to conclude that any redistricting plan submitted by the Task Force in a court proceeding would inevitably be designed to help or aid the Republican Party to the extent possible within constitutional limits. Even if the Task Force's only purpose and expenditures were limited to litigation activities, contributions from business corporations would be supporting the Republican Party.

For the reasons set forth above, it is the opinion of this Office that M.G.L. c.55, s.8 prohibits corporations from making contributions to the Republican Redistricting Task Force. Therefore, the conclusion set forth in Part 3 of AO-89-27 stands unchanged.

This opinion has been rendered solely in the context of M.G.L. c.55 and has been based on the representations in your letter, telephone conversations with the Office's General Counsel and other documentary information or correspondence received by the Office relative to this matter.

Should you have additional questions, please do not hesitate to contact this Office.

Very truly yours,



Mary F. McTigue  
Director

Enclosures

cc: Paul Johnson, Esq.  
James Roosevelt, Esq.  
Leonard Umina, Chairman



THE COMMONWEALTH OF MASSACHUSETTS  
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MARY F. MCTIGUE  
DIRECTOR

December 7, 1989  
AO-89-27

Daniel B. Winslow  
Suite 2800  
100 Summer Street  
Boston, MA 02110

Dear Mr. Winslow:

This letter is in response to your request for an advisory opinion.

You have stated that you have organized a group of individuals, including legislators from the Massachusetts Senate and House of Representatives and leaders of the Republican Party. This organization has tentatively been named the "Republican Redistricting Task Force" (the "Task Force"). The Task Force will finance activities related solely to the state and congressional redistricting process in Massachusetts. The resources of the Task Force will be used to pay for computer services, including computer time and personnel; to gather demographic data on Massachusetts congressional and legislative districts; and on any court costs incurred in legal challenges to congressional and state legislative redistricting plans. No resources of the Task Force will be expended for the purpose of nomination or election of a specific candidate or candidates, or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment or other questions submitted to the voters.

You have made a number of inquiries, for which we will attempt to provide answers as follows:

1. Whether the Task Force will be required to register with the office as a political committee and file a report of its activities?

Section 1 of M.G.L. c.55 defines a political committee as "any committee, association, organization or other group of persons, including a national, regional, state, county or municipal committee, which receives contributions or makes expenditures for the purpose of influencing the nomination or election of a candidate, or candidates . . . or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment or other question submitted to the voters."

It is the opinion of this office that the Task Force, in

financing activities related solely to the state and congressional redistricting process in Massachusetts, will not be receiving contributions or making expenditures for the purpose of influencing the nomination or election of a candidate, or candidates, or for the purpose of opposing or promoting a charter change, referendum question, constitutional amendment or other question submitted to the voters. The Task Force will therefore not be functioning as a political committee, and thus not be required to file a report of its activities with the office.

2. Whether contributors to the Task Force will be subject to the contribution limitations and reporting requirements of M.G.L. c.55?

Because the Task Force will not be operating as a political committee, it is the opinion of this office that contributors will not be subject, with the exception of corporate contributions described below, to the contribution limitations and reporting requirements of M.G.L. c.55.

3. Whether the Task Force may accept corporate contributions to finance its activities?

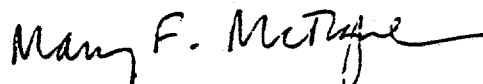
Section 8 of M.G.L. c.55 prohibits business corporations from directly or indirectly giving, paying, expending or contributing, or promising to give, pay, expend or contribute any money or other valuable thing for the purpose of aiding or promoting or antagonizing the interests of any political party.

Because of the sponsorship of Republican legislators and leaders for the Task Force, it is the opinion of this office that corporate contributions to the Task Force would be prohibited by section 8 of M.G.L. c.55 as contributions aiding or promoting or antagonizing the interests of the Republican Party.

This opinion has been rendered solely on the basis of the representations made in your letter and solely in the context of M.G.L. c.55.

Please do not hesitate to contact this office should you have additional questions.

Very truly yours,



Mary F. McTigue  
Director



## SHERIN AND LODGEN

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April 25, 1991

Mary F. McTigue, Director  
Office of Campaign and Political Finance  
Room 114, One Ashburton Place  
Boston, Massachusetts 02108Re: Request for Clarification/Further Advisory Opinion;  
Republican Redistricting Task Force

Dear Ms. McTigue:

Pursuant to G.L. c. 55, §3, and at the suggestion of Peter Sturges, I am writing to request a clarification of Advisory Opinion AO-89-27 or a further advisory opinion from your office with respect to the application of G.L. c. 55 to financing activities relating to state ("legislative") and federal ("congressional") redistricting in Massachusetts.

We understand from your earlier advisory opinion that the Republican Redistricting Task Force (R<sup>2</sup>TF) is not required to register with OCPF as a political committee and further is not subject to contribution limitations and reporting requirements for individual, non-corporate contributors. Since the time of our last request, we have formed the R<sup>2</sup>TF. There are additional facts which have arisen since your office issued AO-89-27 which may materially affect that opinion as applied to the activities of the R<sup>2</sup>TF. Additionally, to the extent that the additional facts do not materially change the advice rendered in AO-89-27, we wish to raise several concerns for your consideration in possibly revising or clarifying AO-89-27.

1. Additional Factual Circumstances

AO-89-27 opined that corporations could not pay any costs of legislative redistricting litigation, including the cost of expert witnesses, because the participation of Republican

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legislators and Party leaders in the R<sup>2</sup>TF would have the effect of causing such contributions to promote or antagonize the interests of the Republican Party. With this in mind, we ask you to consider the following:

(a) The "Republican Party", in its official capacity as represented by the Chairman and Executive Director of the Republican State Committee, is in a minority of the R<sup>2</sup>TF membership. There are more than 15 people involved in the R<sup>2</sup>TF, of whom only two, Leon Lombardi and Beth Lindstrom, represent the interests of the Massachusetts Republican State Committee. The other members are all Republicans of diverse interests who do not formally represent the Massachusetts Republican State Committee. The R<sup>2</sup>TF membership also includes non-legislators.

(b) Computer services and possibly expert witnesses retained by the R<sup>2</sup>TF will be made available to non-Republican groups, such as the Black Political Task Force, Latino Democratic Committee of Massachusetts, Asian Political Caucus and the Rainbow Coalition, to assist those groups in analyzing any proposal prepared by the Legislature and to prepare alternative legislative and congressional redistricting plans for consideration by the Legislature and the Federal Court. We anticipate that any R<sup>2</sup>TF plan will maximize legislative and congressional representation by persons of color, and will involve the active participation by persons of color, Republican and non-Republican, to achieve that goal. The R<sup>2</sup>TF has publicly stated its intention to attempt to enforce compliance with the federal Voting Rights Act of 1965, as amended.

(c) The express purpose of the R<sup>2</sup>TF is to insure compliance with state and federal requirements in all legislative and congressional redistricting plans. Redistricting plans either are legal or they are illegal. Based on our early analysis, it appears that Massachusetts will violate the Voting Rights Act by failing to redistrict legislative districts for the 1992 elections, notwithstanding the fact that additional districts can and should be created in which persons of color constitute the majority vote. Additionally, the state Democratic legislative leadership has indicated that it does not intend to create an urban congressional district in which persons of color would constitute a majority vote, again in violation of the federal Voting Rights Act. Assuming the R<sup>2</sup>TF's activities, as stated in my letter of October 10, 1989, are limited to analyzing proposed plans for statutory

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and constitutional compliance, preparing legal alternatives to putatively illegal plans, and litigating in Federal Court to prove that the Legislature has violated federal law, these activities will be undertaken by the R<sup>2</sup>TF in the public interest rather than for any benefit to the Republican Party exclusively.

Please let me know whether the foregoing considerations, or any one of them, changes the assumption of AO-89-27 that the activities of the R<sup>2</sup>TF will promote or antagonize the interests of the Republican Party thus prohibiting corporate contributions.

2. Concern Regarding Prohibition of Corporate Contributions

In the event that the foregoing circumstances do not change your view with respect to the propriety of corporate contributions for redistricting activities in the context of AO-89-27, we ask that you reconsider that advisory opinion.

To prohibit corporations from paying for redistricting-related litigation, expert witnesses, and computer services simply because the persons undertaking the activity are Republican raises serious constitutional concerns regarding the R<sup>2</sup>TF membership's rights of association. Would OCPF's opinion be different if the group instead consisted of non-Republicans as well as Republicans? If so, our concern regarding associational rights is only heightened.

R<sup>2</sup>TF's activities almost certainly will result in litigation based on statutory and constitutional grounds. It strains credibility to argue that the Democratic-controlled Legislature could pass an unconstitutional plan which -- if challenged by Republicans as unconstitutional -- would possibly result in a judgment that aided or promoted the interests of the Republican Party differently than the general public interest. A plan is either constitutional or is not. If the plan is found to be constitutional, then the plan remains intact and any alternative proposed by R<sup>2</sup>TF never will see the light of day. If the plan is unconstitutional, and the R<sup>2</sup>TF prevails, the basis of any judgment for R<sup>2</sup>TF will be grounded solely on statutory and constitutional arguments.

Accordingly, even if the foregoing additional circumstances do not change OCPF's view regarding corporate contributions, OCPF should reconsider its view altogether.

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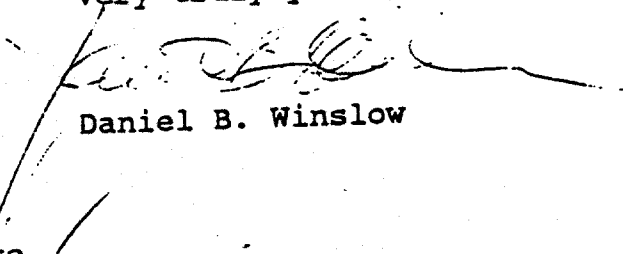
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3. Clarification Pending Further Opinion

We have interpreted AO-89-27 as creating a disparity between the FEC's treatment of congressional redistricting and OCPF's treatment of legislative redistricting. Accordingly, RTF has established two separate accounts: the state legislative redistricting fund and the federal congressional redistricting fund. These accounts were created separately to prevent any co-mingling of contributions from individuals and corporations. Although we have not yet received any corporate contribution, any contributions received by corporations before your response to this request will be held in escrow in the federal congressional redistricting fund. In the event that OCPF maintains that corporations still properly cannot contribute to state legislative redistricting efforts, please let me know whether corporate funds may be used solely for federal congressional redistricting, with appropriate provisions to prevent co-mingling of resources.

Kindly do not hesitate to call me if you need any further information. Please let us know your opinion at your earliest convenience.

Very truly yours,



Daniel B. Winslow

DBW:mcj

cc: Peter Sturges, Esquire